IN THE UNITED STATES BANKRUPTCY COURT

FOR THE SOUTHERN DISTRICT OF GEORGIA

WAYCROSS DIVISION

IN RE:	)	
	)	
QUINCEY DANIELS, JR.,	)	CHAPTER 13 BANKRUPTCY
	)	CASE NO. 93-50535
	)	
	)	
DEBTOR	)	

ORDER ON MOTION FOR MORATORIUM

On September 7, 1994, the Court considered the Debtor's Motion for Moratorium for Payments and the Chapter 13 Trustee's Response. The Debtor's motion requested that the Court establish a moratorium on Chapter 13 plan payments until January, 1995. The Debtor says that since the filing of the case, he has developed a skin problem on his feet making it impossible for him to wear shoes. He has applied for social security disability and ERV pension benefits. Those benefits are not expected to begin for at least six months. The Debtor showed that he was expecting to be admitted to the hospital for surgery during the month following the hearing.

This Chapter 13 case was filed on October 19, 1993. The Chapter 13 plan was confirmed on March 3, 1994. The plan payments have been established at Three Hundred Dollars ($300.00) per month. The Chapter 13 Trustee reported that

payments into the plan were current as of the date of the hearing on the Debtor's request for moratorium.

There is no reason to question the Debtor's representations as to the reason for his personal and financial distress. It is clear that he has encountered problems since the confirmation of this case which are going to make it difficult, if not impossible, to maintain the required plan payments. If the Bankruptcy Code contained any provision which allowed a Bankruptcy Judge to grant the Debtor's request for moratorium, I would grant that request in this case. There is, however, no such provision. Further, such a provision would be inconsistent with the spirit and purpose of Chapter 13.

The relief available under Chapter 13 is very flexible. Debtors are permitted to propose plans which are uniquely adapted to the particular circumstances of the case. The mandatory requirements for a plan are set out in 11 U.S.C. § 1322(a). Other optional provisions are detailed in 11 U.S.C. §§ 1322(b) and 1322(c). The requirements for confirmation of a plan are set out at 11 U.S.C. § 1325. If the plan does not contain any provisions that are prohibited by 11 U.S.C. § 1322, and the requirements of 11 U.S.C. § 1325 are satisfied, the Court will confirm the Debtor's plan.

As an additional benefit, 11 U.S.C. § 1329 provides for modification of a Chapter 13 plan <u>following confirmation</u>. Any such modification must comply with the requirements of section

1322(b) and section 1325. If the Debtor in this case wants to propose a modification to the Chapter 13 plan which would provide for a payment schedule different from the one originally established, such a proposal could be considered in the form of a modification to the Chapter 13 plan. The standards for considering the modification are the same as the standards for considering confirmation originally.

It appears that the Debtor did not file a modification in this case because the plan would have proposed no payments to creditors. It is not likely that the Court would be able to confirm such a plan since the provisions of 11 U.S.C. § 1325 are replete with requirements for various payments to be made to creditors in accordance with the status of their respective claims. In this case, there are two secured creditors, each one entitled to be paid a value, "not less than the allowed amount of such claim..." as a condition of confirmation pursuant to 11 U.S.C. § 1325(a)(5)(b)(ii). A proposal to make no payments under a plan would clearly fail to satisfy that requirement for confirmation. The Court cannot accomplish by approving a moratorium what could not be accomplished by modification of a Chapter 13 plan.

Despite the strict legal analysis set out above, there is a practical consideration. Debtors in Chapter 13 cases will stumble from time to time. A system that immediately ejects such debtors would not serve the best interest of the debtors or

creditors. Some allowance must be made as a matter of administrative convenience for debtors to falter and later recover. That allowance, however, should not be established in the form of a "moratorium" as the Debtor has requested in this case. Instead, that allowance is already inherent in the system of administering Chapter 13 cases.

The Chapter 13 Trustee's office cannot determine that payments are late until after the due date. The trustee has to establish a grace period to allow for late payments and processing of salary order remittances. If the trustee were to try to take action in all cases as soon as an arrearage occurred, it would pose for the trustee an administrative impossibility. That is not to say that the Court approves of a delinquency for any period of time. Neither does it suggest that if a case were brought to the Court's attention immediately following the occurrence of a delinquency that such a case would not be immediately dismissed. It simply acknowledges the reality that the trustee does not routinely bring such cases to the Court's attention.

After the trustee has determined that she will pursue a delinquency, she will usually make a motion to dismiss the case. The motion allows a period of twenty (20) days for the debtor to request a hearing. If a debtor requests a hearing during that twenty day period, the Court schedules a hearing and issues a notice advising parties of the scheduling of the hearing.

At its fastest pace, this procedure is not likely to result in the dismissal of a case before a period of sixty (60) days has expired since the first default in plan payments. More likely the period of time is ninety (90) days or more.

This administrative delay necessarily provides to the distressed debtor a certain flexibility. If the debtor looses a job and finds himself or herself unable to make payments, it is most likely that the debtor will be able to find another job, and catch up the payments before the trustee brings a motion to dismiss the case. Even where a motion is brought and the debtor requests a hearing, the trustee can be expected to be reasonable in considering alternatives for the curing of arrearages. There is ample leeway for the willing and able debtor to experience personal and/or financial difficulties and still complete payments under a Chapter 13 plan. There is no necessity for establishing a moratorium as the Debtor has requested in this case.

In denying the Debtor's request, the Court notes that this case is still pending. The trustee has not made a motion to dismiss. Perhaps the trustee will monitor this case more carefully than she would have if the Debtor had not filed the request for moratorium. Still, the trustee is mindful of the possibility that the Debtor will find a way to fund these plan payments even if he is unemployed. It often happens that friends and family members will assist a debtor in keeping plan

payments current under circumstances such as the Debtor has demonstrated in this case. Considering that the plan payments were current as of the date of the hearing in this case, it is unlikely that the Debtor's default and the subsequent motions and hearings which would follow the trustee's motion to dismiss would cause the case to actually be dismissed before December, 1994 or January, 1995. There is ample leeway in the administrative process for the Debtor to try to find a way to remedy his misfortune.

The Debtor's motion is denied. The Chapter 13 case continues at this time in good standing.

SO ORDERED this _____ day of September, 1994.

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JAMES D. WALKER, JR., Judge
United States Bankruptcy Court